

Message Text

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TAGS: AORG, UN

SUBJECT:UN ADMINISTRATION: TAXATION OF LUMP SUM PENSIONS

REF: USUN 2335

1. AS MISSION IS AWARE, WE HAVE BEEN CANVASSING UN HEAD-
QUARTERS CITIES TO OBTAIN INFORMATION ON HOST COUNTRY TAX
POLICY ON LUMP SUM PENSION PAYMENTS. REPLIES WE HAVE
RECEIVED DO NOT SUPPORT UN POSITION COMMUNICATED TO US LAST
YEAR THAT SECTION 18B OF THE CONVENTION ON PRIVILEGES AND
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IMMUNITIES OF THE UNITED NATIONS EXEMPTS SUCH PAYMENTS FROM
NATIONAL INCOME TAXES AND THAT MEMBER COUNTRIES ALSO INTER-
PRET THE CONVENTION IN THIS MANNER. WE ARE IN THE PROCESS
OF PREPARING A REPLY TO INQUIRIES FROM CERTAIN SPECIALIZED
AGENCIES WITH WHOM WE HAVE TAX REIMBURSEMENT AGREEMENTS ON
WHETHER WE WILL OR WILL NOT REPAY TO SUCH AGENCIES THEIR
REIMBURSEMENTS TO RETIRING AMERICAN EMPLOYEES FOR U.S.

TAXES PAID BY LATTER ON LUMP SUM PENSION PAYMENTS. OBVIOUSLY, POSITION TAKEN BY UNITED NATIONS ON THIS ISSUE MUST BE FACTORED INTO OUR DECISION.

2. UNITED STATES HAS MUCH LESS TO SAY ABOUT USE OF UN'S TAX EQUALIZATION FUND THAN ABOUT AMOUNTS IT WOULD REIMBURSE SPECIALIZED AGENCIES UNDER TAX REIMBURSEMENT AGREEMENTS.

LATTER ARE SUBJECT OF EXPLICIT BILATERAL AGREEMENT WHEREAS TAX EQUALIZATION FUND WAS ESTABLISHED BY UNGA RESOLUTIONS WHOSE INTERPRETATION IS SUBJECT TO SAME PROCESS AS ANY OTHER UNGA RESOLUTIONS (OFTEN INVOLVING UN LEGAL OPINION). SUY ARGUES, HOWEVER, THAT HE IS UNABLE TO PREPARE THE NECESSARY OPINION BECAUSE OF THE DANGER OF LEAKS THAT WOULD PRECIPITATE A RASH OF AMERICAN RETIREMENTS IN ORDER TO TAKE ADVANTAGE OF EXISTING PRACTICE. ALTHOUGH IT IS HIS OPINION AND NOT OURS WHICH WILL BE DECISIVE, WE CANNOT REFUSE TO SHARE OUR VIEWS WITH HIM SINCE HE HAS SPECIFICALLY REQUESTED THEM.

3. ACCORDINGLY, MISSION SHOULD INFORM SUY THAT DEPARTMENT HAS BEEN REVIEWING QUESTION OF PROPRIETY OF TAX REIMBURSEMENT ON ONE-THIRD LUMP SUM PENSION PAYMENTS AND HAS REACHED FOLLOWING PRELIMINARY CONCLUSIONS:

IT WOULD NOT BE LEGALLY APPROPRIATE TO USE THE TAX EQUALIZED OFFICIAL USE

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ZATION FUND TO REIMBURSE EMPLOYEES OF THE UN FOR NATIONAL TAXES ON ONE-THIRD LUMP SUM PENSION PAYMENTS, FOR FOLLOWING REASONS:

A. TAX EQUALIZATION FUND WAS ESTABLISHED IN UNGA RESOLUTION 973(X), WHICH PROVIDED, INTER ALIA, THAT THERE QUOTE SHALL BE CHARGED AGAINST THE CREDITS OF MEMBER STATES AMOUNTS PAID UNDER RESOLUTION C (OF RES. 973) BY WAY OF DOUBLE TAXATION RELIEF IN RESPECT OF NATIONAL INCOME TAXES. UNQUOTE. RESOLUTION C PROVIDES, INTER ALIA: QUOTE WHERE A STAFF MEMBER IS SUBJECT BOTH TO STAFF ASSESSMENT UNDER THIS PLAN AND TO NATIONAL INCOME TAXATION IN RESPECT OF THE SALARIES AND EMOLUMENTS PAID TO HIM BY THE UNITED NATIONS, THE SECRETARY-GENERAL IS AUTHORIZED TO REFUND TO HIM THE AMOUNT OF STAFF ASSESSMENT COLLECTED FROM HIM PROVIDED THAT:

(1) THE AMOUNT OF SUCH REFUND SHALL IN NO CASE EXCEED THE AMOUNT OF HIS INCOME TAXES PAID AND PAYABLE IN RESPECT OF HIS UNITED NATIONS INCOME;

(2) IF THE AMOUNT OF SUCH INCOME TAXES EXCEED THE AMOUNT

OF STAFF ASSESSMENT, THE SECRETARY-GENERAL MAY ALSO PAY TO THE STAFF MEMBERS THE AMOUNT OF SUCH EXCESS;

(3) PAYMENTS MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE SHALL BE CHARGED TO THE TAX EQUALIZATION FUND.

B. RESOLUTION ONLY PROVIDES AUTHORIZATION FOR REIMBURSEMENTS WHERE THE STAFF MEMBER IS SUBJECT TO BOTH STAFF

ASSESSMENT AND TO NATIONAL INCOME TAXATION IN RESPECT OF THE SALARIES AND EMOLUMENTS PAID TO HIM BY THE UNITED NATIONS, IN ORDER TO AVOID DOUBLE TAXATION.

C. IT IS OUR UNDERSTANDING THAT 1/3 LUMP SUM PENSION LIMITED OFFICIAL USE

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PAYMENTS ARE COMPUTED ON THE BASIS OF GROSS SALARY AND HAVE NOT BEEN SUBJECT TO STAFF ASSESSMENT. ACCORDINGLY, IMPOSITION OF A U.S. TAX WOULD NOT SEEM TO CONSTITUTE A DOUBLE TAX.

D. THE RESOLUTION ONLY APPLIES WHERE THE NATIONAL TAX IS IMPOSED ON "SALARIES AND EMOLUMENTS PAID TO HIM BY THE UNITED NATIONS." THIS PHRASE IS DRAWN FROM ARTICLE 18(B) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS. THE LEGISLATIVE HISTORY OF THE STAFF ASSESSMENTS PLAN AND THE REIMBURSEMENT PRACTICE BOTH CLEARLY INDICATE THAT THEY WERE DESIGNED TO ENSURE TO EMPLOYEES WHO WERE NATIONALS OF A STATE WHICH HAD NOT ADHERED TO ARTICLE 18(B) THE BENEFITS OF ARTICLE 18(B).

E. IT DOES NOT APPEAR THAT THE PHRASE "SALARIES AND EMOLUMENTS" IN ARTICLE 18(B) WAS INTENDED TO INCLUDE 1/3 LUMP SUM PENSION PAYMENTS.

(1) THE NEGOTIATING HISTORY OF THE CONVENTION CONTAINS THE FOLLOWING REPORT: "THE SUB-COMMITTEE EXAMINED ANOTHER PROPOSAL SUBMITTED BY THE ADVISORY GROUP OF EXPERTS ON ADMINISTRATIVE AND BUDGETARY MATTERS, WITH A VIEW TO EXEMPTING ALL MEMBERS OF THE STAFF OF THE ORGANIZATION FROM TAXATION ON RETIREMENT BENEFITS AND EXEMPTING THEIR BENEFICIARIES FROM TAXATION ON DEATH BENEFITS, EITHER IN THE FORM OF A LUMP SUM OR BENEFITS PAID BY THE ORGANIZATION TO WIDOWS AND ORPHANS. THE SUB-COMMITTEE DECIDED WITHOUT PREJUDICE TO THIS QUESTION BEING TAKEN UP AND CONSIDERED SEPARATELY AT A LATER STAGE, THAT A PROVISION TO THIS EFFECT SHOULD NOT BE INCLUDED IN THE GENERAL CONVENTION".

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(2) TO OUR KNOWLEDGE, THE QUESTION WAS NOT SUBSEQUENTLY CONSIDERED. TAX EXEMPTION WAS ACCORDED IN ARTICLE 18(B) BECAUSE OF THE INTERNATIONAL CHARACTER OF THE STAFF OF THE UNITED NATIONS AND IN ORDER TO MINIMIZE NATIONAL INFLUENCE ON EMPLOYEE DECISIONS. AFTER SEPARATION FROM SERVICE WITH THE UNITED NATIONS, THE RATIONALE FOR CONTINUING TAX EXEMPTION DOES NOT SEEM TO APPLY.

(3) THERE IS NOT A LONG-STANDING PRACTICE OF REIMBURSEMENT FOR TAXES ON 1/3 LUMP SUM PENSION PAYMENTS.

ALTHOUGH THE UNITED NATIONS AUTHORIZED THE OPTION OF CHOOSING 1/3 LUMP SUM PAYMENTS IN 1949, NO REIMBURSEMENTS WERE MADE UNTIL 1974. MOREOVER, IT IS OUR UNDERSTANDING THAT SEVERAL SPECIALIZED AGENCIES HAVE CHALLENGED THE APPROPRIATENESS OF THIS REIMBURSEMENT AND NOT MADE SUCH REIMBURSEMENTS.

(4) OUR CONTACTS WITH SEVERAL OTHER STATES' PARTIES TO THE CONVENTION INDICATE THAT THEY DO NOT INTERPRET ARTICLE 18(B) TO EXEMPT 1/3 LUMP SUM PENSION PAYMENTS.

F. THUS, OUR PRELIMINARY CONCLUSION IS THAT THE TEF SHOULD NOT BE USED TO REIMBURSE TAXES ON 1/3 LUMP SUM PENSION PAYMENTS BECAUSE (A) TAX ACTION DOES NOT CONSTITUTE A "DOUBLE-TAXATION"; AND (B) 1/3 LUMP SUM PENSION PAYMENTS SHOULD NOT BE CONSIDERED "SALARIES AND EMOLUMENTS" FOR PURPOSES OF ARTICLE 18(B) OF THE CONVENTION OR RES. 973 (X), PART C.

4. SENIOR AMERICAN OFFICIALS HAVE BEEN ASSURED THAT THEY WOULD BE GIVEN AN OPPORTUNITY TO COMMENT ON OPTIONS AND ARGUMENTATION ENTERING INTO FINAL DETERMINATION OF U.S. POSITION ON THIS QUESTION. AT MEETING WITH CUNNINGHAM AND HENNES ON JUNE 1, THEY WERE GIVEN AN
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ESTIMATE, IN RESPONSE TO QUERY, THAT FINAL U.S. POSITION WOULD BE DETERMINED IN THE NEXT MONTH OR SO. URGENT REQUEST BY SUY FOR REPLY IS FORCING U.S. TO GIVE VIEWS (HOWEVER PRELIMINARY) IN FORM THE UN MAY CHOOSE TO ACT UPON.

5. COMMENT: INPUT BY SENIOR AMERICAN UN OFFICIALS

CANNOT UNDER THE CIRCUMSTANCES HAVE A MEANINGFUL
EFFECT ON OUR POSITION. WE SUGGEST THEREFORE THAT,
AFTER PRIOR NOTICE TO SUY OF OUR COMMITMENT TO
AMERICANS, MISSION CONVENE THIS GROUP AND EXPLAIN TO
THEM WHAT HAS HAPPENED, AND WHY PRELIMINARY RESPONSE
TO SUY IS NECESSARY. MISSION CAN THEN FORMALLY
COMMUNICATE ABOVE PRELIMINARY U.S. VIEWS TO SUY.

6. TREASURY HAS SEEN AND CONCURRED IN THIS MESSAGE.
CHRISTOPHER

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